

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
TEXAS – DALLAS DIVISION

LACHICA KING

PLAINTIFF,

V.

CACHE, INC.

DEFENDANT.

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3:11-CV-0138

JURY TRIAL DEMANDED

**PLAINTIFF’S MOTION FOR LEAVE TO
FILE AMENDED COMPLAINT (CORRECTED)**

Pursuant to the Court’s Scheduling Order dated March 3, 2011, and Fed. R. CIV. P.15 (a) Plaintiff LaChica King files this Motion to Amend and in support of this Motion would show:

1. This case was removed from Dallas County District Court and based on diversity jurisdiction.
2. Plaintiff seeks to amend her complaint to add substantive claims for relief under the Family Medical Leave Act of 1993 (“FMLA”), Title VII and 42 U.S.C. §1981.
3. Plaintiff also seeks to amend her complaint so that it conforms to federal pleading practice and contains a proper caption of a federal court case.
4. The claims that Plaintiff seek to add will not surprise the Defendant or work an injustice because Plaintiff disclosed the FMLA in Initial Disclosures and the Title VII and 42 U.S. C. §1981 claims are based on the same acts and omissions as the claims already asserted herein as a violation of the Texas Commission on Human Rights Act.

CERTIFICATE OF CONFERENCE

5. On April 20, 2011, I conferred with defendant's counsel Rex Harrison regarding objections to a Motion to Amend to add FMLA claims. On May 10, 2011, Ms. Cheryl Kirby responded by email that the Motion to Amend to Add FMLA claims was opposed because in defendant's opinion King "...was granted all FMLA rights to which she would have been entitled had she formally requested FMLA leave, and therefore, she has no cause of action under the FMLA." The Motion is opposed.
6. There has been no substantial discovery in the case. The parties served Initial Disclosures and Defendant served a document request. Neither party has served interrogatories or taken any depositions.
7. This Motion is made in the interests of justice so that King may assert all her claims for relief in one proceeding and not for purposes of delay.

ARGUMENTS AND AUTHORITIES

8. Unless an opposing party can show prejudice, bad faith or undue delay, a court should grant leave to file an amended pleading. Foman v. Davis, 371 U.S. 178, 182, 83 S. St. 227, 230 (1962). Because this Motion is filed within the time permitted by this Court's Scheduling Order, the claim was disclosed to Defendants in Initial Disclosures and no significant discovery has been done, it is difficult to see how the amendment will prejudice the defendant.
9. The proposed Amended Complaint is attached as "Exhibit A" to this motion.
10. For the above reasons, King respectfully asks that this Court grant her Motion to Amend.

Respectfully submitted,

s/ N. Sue Allen
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Attorney for LaChica King

CERTIFICATE OF SERVICE

I certify that a true copy of this document was served on the following counsel of record via the Court's ECF filing system.

Mr. Reece L. Harrison
Ms. Cheryl Kirby
Oppenheimer, Blend, Harrison & Tate
711 Navarro, Sixth Floor
San Antonio, Texas 78205

s/ N. Sue Allen
N. Sue Allen